

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 07- 06

AN ORDINANCE GRANTING A NON-EXCLUSIVE CABLE FRANCHISE TO VERIZON NORTHWEST, INC., AND DECLARING AN EMERGENCY.

WHEREAS, in 1980 the Metropolitan Area Communications Commission (hereinafter "MACC") was formed by Intergovernmental Cooperation Agreement, amended in 2002 and now an Intergovernmental Agreement (hereinafter IGA) to enable its member jurisdictions to work cooperatively and jointly on communications issues, in particular the joint franchising of cable services and the common administration and regulation of such franchises, and the City of Tigard is a member of MACC; and

WHEREAS, the IGA authorizes MACC and its member jurisdictions to grant one or more nonexclusive franchises for the construction, operation and maintenance of a cable service system within the combined boundaries of the member jurisdictions; and

WHEREAS, the IGA requires that each member jurisdiction to be served by the proposed franchisee must formally approve any cable service franchise; and

WHEREAS, Verizon Northwest, Inc. has formally requested a franchise with MACC and several of its member jurisdictions, and MACC has reviewed the franchisee's qualifications in accordance with federal law; and

WHEREAS, the Board of Commissioners of MACC, by Resolution 2007-01 adopted on the 8th day of February, 2007, recommended that affected member jurisdictions grant a franchise to Verizon Northwest, Inc. in the form attached hereto as Exhibit "A"; and

WHEREAS, the Council finds that approval of the recommended franchise is in the best interest of the City and its citizens, in order to provide opportunities for effective competition in the provision of these services consistent with the federal Telecommunications Act of 1996; and

WHEREAS, due to timing constraints in coordinating the franchise approval with other members of MACC, the City Council finds that a state of emergency exists for the passage of this ordinance.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: There is hereby granted to Verizon Northwest, Inc. a non-exclusive franchise on the terms and conditions contained in Exhibit "A." This nonexclusive grant authorizes the provision of cable services within the jurisdictional boundaries of the City as said boundaries presently exist or may be amended, commencing upon Verizon's fulfillment of the franchise acceptance provisions contained in the franchise and

upon the formal determination by the MACC Administrator that all affected jurisdictions have approved the franchise, and ending fifteen years thereafter.

SECTION 2: The grant of franchise at Section 1 is conditioned upon each of the following events:

(a) The affirmative vote of the governing body of each MACC member jurisdiction to be served under the franchise;

(b) Verizon's fulfillment of the franchise acceptance provisions contained in the Franchise; and

(c) Formal written determination by the MACC Administrator that each of the above two events has occurred.

SECTION 3: Because of the need to coordinate this franchise approval with other governments in MACC, an emergency is declared and this ordinance shall take effect upon its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By majority vote of all Council members present after being read by number and title only, this 10th day of April, 2007.

Catherine Wheatley
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this 10th day of April, 2007.

C. A. Dirksen
Craig Dirksen, Mayor

Approved as to form:

Smith V. Kamm
City Attorney

4.10.07
Date

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Exhibit A

**CABLE FRANCHISE
AGREEMENT**

Between

**THE CITY OF TIGARD
AND
VERIZON NORTHWEST INC.**

CABLE FRANCHISE AGREEMENT

between

WASHINGTON COUNTY,

**the cities of
BEAVERTON,
CORNELIUS,
DURHAM,
FOREST GROVE,
HILLSBORO,
KING CITY,
LAKE OSWEGO,
RIVERGROVE,
TIGARD, and
TUALATIN**

**AS PARTICIPATING MEMBERS OF THE
METROPOLITAN AREA COMMUNICATIONS COMMISSION**

AND

VERIZON NORTHWEST INC.

2007

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THIS CABLE FRANCHISE AGREEMENT (the "Franchise" or "Agreement") is entered into by and between the Metropolitan Area Communications Commission (the "Commission"), Member Jurisdictions, and Verizon Northwest Inc., a corporation duly organized under the applicable laws of the State of Washington (the "Franchisee").

WHEREAS, Grantor and Member Jurisdictions wish to grant Franchisee a nonexclusive franchise to construct, install, maintain, extend and operate a cable communications system in the Franchise Area as designated in this Franchise;

WHEREAS, Grantor and Member Jurisdictions are "franchising authorities" in accordance with Title VI of the Communications Act (*see* 47 U.S.C. §522(10)) and are authorized to grant one or more nonexclusive cable franchises;

WHEREAS, Franchisee is in the process of installing a Fiber to the Premise Telecommunications Network ("FTTP Network") in the Franchise Area for the transmission of Non-Cable Services pursuant to authority granted by the State of Oregon;

WHEREAS, the FTTP Network will occupy the Public Rights-of-Way within the jurisdictional boundaries of the Commission's Member Jurisdictions, and Franchisee desires to use portions of the FTTP Network once installed to provide Cable Services (as hereinafter defined) in the Franchise Area;

WHEREAS, Grantor has identified the future cable-related needs and interests of the Commission, its Member Jurisdictions and their citizens, has considered the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee's plans for its Cable System are adequate in a full public proceeding affording due process to all parties;

WHEREAS, Grantor and Member Jurisdictions have found Franchisee to be financially, technically and legally qualified to operate the Cable System;

WHEREAS, Grantor and Member Jurisdictions have determined that the grant of a nonexclusive franchise to Franchisee is consistent with the public interest; and

WHEREAS, Grantor and Franchisee have reached agreement on the terms and conditions set forth herein and the parties have agreed to be bound by those terms and conditions.

NOW, THEREFORE, in consideration of Grantor and Member Jurisdictions' grant of a franchise to Franchisee, Franchisee's promise to provide Cable Service to residents of the Franchise Area pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein the following definitions shall apply:

1.1. *Access Channel*: A video channel, which Franchisee shall make available to Grantor without charge for non-commercial public, educational, or governmental use for the transmission of video programming as directed by Grantor.

1.2. *Additional Service Area*: Shall mean any such portion of the Service Area added pursuant to Section 3.1.2 of this Agreement.

1.3. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, Franchisee.

1.4. *Basic Service*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522, which currently states, "any service tier which includes the retransmission of local television broadcast signals."

1.5. *Cable Operator*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(5), which currently states, "any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system."

1.6. *Cable Service or Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), which currently states, "the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service."

1.7. *Cable System or System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), which currently states, "a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c)) to the extent that such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 653 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility systems." Subject to Section 2.10, the Cable System shall be limited to the optical spectrum wavelength(s), bandwidth or future technological capacity that is used for the transmission of Cable Services directly to Subscribers within the Franchise/Service Area and shall not include the tangible network facilities of a common carrier subject in whole or in part to Title II of the Communications Act or of an Information Services provider.

1.8. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), which currently states, "a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation)."

1.9. *Commission*: The Metropolitan Area Communications Commission, its officers, agents and employees, and, for purposes of this Agreement, its affected Member Jurisdictions which are the Oregon cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin, together with Washington County. The Commission was created and exercises its powers pursuant to an Intergovernmental Cooperation Agreement, as authorized by state law (particularly ORS Chapter 190) and the laws, charters, and other authority of the individual member units of local government who are members of the Commission. The powers of the Commission have been delegated to it by its members and although it may exercise those powers as an entity, it remains a composite of its members.

1.10. *Communications Act*: The Communications Act of 1934, as amended.

1.11. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of corporate affairs.

1.12. *Days*: Calendar days unless otherwise noted.

1.13. *Designated Access Provider*: The entity or entities designated by the Grantor to manage or co-manage the Public, Education, and Government Access Channels and facilities. The Grantor may be a Designated Access Provider.

1.14. *Educational Access Channel*: An Access Channel available solely for the use of the local public schools in the Franchise Area and other higher level educational institutions in the Franchise Area.

1.15. *Effective Date*: The effective date of this Agreement shall be upon the Grantor's written certification of approval of all its Member Jurisdictions and Franchisee's unconditional written acceptance of this Agreement. If either event fails to occur, this Agreement shall be null and void, and any and all rights of Franchisee to own or operate a Cable System within the Franchise Area under this Agreement shall be of no force or effect.

1.16. *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.17. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances, lockouts, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which Franchisee is not primarily responsible, fire, flood, or other acts of God, or documented work delays caused by waiting for utility providers to service or monitor utility poles to which

Franchisee's FTTP Network is attached, and documented unavailability of materials and/or qualified labor to perform the work necessary to the extent that such unavailability of materials or labor was reasonably beyond the ability of Franchisee to foresee or control.

1.18. *Franchise Area*: Those portions of the unincorporated area of Washington County and the incorporated areas (entire existing territorial limits) of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin as shown in Exhibit A, and such additional areas as may be included in the corporate (territorial) limits of Member Jurisdictions during the term of this Agreement or are added pursuant to Section 3.1.2.

1.19. *Franchisee*: Verizon Northwest Inc., and its lawful and permitted successors, assigns, and transferees.

1.20. *Government Access Channel*: An Access Channel available solely for the use of Grantor and other local governmental entities located in the Franchise Area.

1.21. *Grantor*: The Metropolitan Area Communications Commission (MACC) created in 1980 which is the local franchising authority for the Oregon cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin, and Washington County, or the lawful successor, transferee, or assignee thereof.

1.22. *Gross Revenue*: All revenue, including any and all cash, credits, property, or consideration of any kind, as determined in accordance with generally accepted accounting principles which is earned or derived by Franchisee and/or its Affiliates received from Franchisee's provision of Cable Service over the Cable System in the Franchise Area. Gross Revenue shall be reported to Grantor using the "accrual method" of accounting. Gross Revenue shall include the following items so long as all other cable providers in the Service Area include the same in Gross Revenues for purposes of calculating franchise fees:

- (a) fees charged for Basic Service;
- (b) fees charged to Subscribers for any service tier other than Basic Service;
- (c) fees charged for premium Channel(s), e.g. HBO, Cinemax, or Showtime;
- (d) fees charged to Subscribers for any optional, per-channel, or per-program services;
- (e) charges for installation, additional outlets, relocation, disconnection, reconnection, and change-in-service fees for video or audio programming;
- (f) fees for downgrading any level of Cable Service programming;
- (g) fees for service calls;
- (h) fees for leasing of Channels;
- (i) rental of customer equipment, including converters (e.g. set top boxes, high definition converters, and digital video recorders) and remote control devices;
- (j) advertising revenue as set forth herein;
- (k) revenue from the sale or lease of access Channel(s) or Channel capacity;
- (l) revenue from the sale or rental of Subscriber lists;

- (m) revenues or commissions received from the carriage of home shopping channels;
- (n) fees for any and all music services that are deemed to be a Cable Service over a Cable System;
- (o) revenue from the sale of program guides;
- (p) late payment fees;
- (q) forgone revenue that Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value;
- (r) revenue from NSF check charges;
- (s) revenue received from programmers as payment for programming content cablecast on the Cable System; and
- (t) Franchise fees.

Advertising commissions paid to independent third parties shall not be deducted from advertising revenue included in Gross Revenue. Advertising revenue is based upon the ratio of the number of Subscribers as of the last day of the period for which Gross Revenue is being calculated to the number of Franchisee's Subscribers within all areas covered by the particular advertising source as of the last day of such period, e.g., Franchisee sells two ads: Ad "A" is broadcast nationwide; Ad "B" is broadcast only within Oregon. Franchisee has 100 Subscribers in the Franchise Area, 500 Subscribers in Oregon, and 1,000 Subscribers nationwide. Gross Revenue as to the Grantor from Ad "A" is 10% of Franchisee's revenue therefrom. Gross Revenue as to the Grantor from Ad "B" is 20% of Franchisee's revenue therefrom.

Gross Revenue shall not include:

1.22.1. Revenues received by any Affiliate or other Person from Franchisee in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System in the Franchise Area;

1.22.2. Bad debts written off by Franchisee in the normal course of its business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected;

1.22.3. Refunds, rebates, or discounts made to Subscribers or other third parties;

1.22.4. Any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from: Telecommunications Services; Information Services, including without limitation Internet Access services; charges made to the public for commercial or cable television that is used for two-way communication; and any other revenues attributed to Non-Cable Services in accordance with applicable federal and state laws or regulations;

1.22.5. Any revenue of Franchisee or any Person that is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, notwithstanding that portion of such revenue that represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise, which portion shall be included in Gross Revenue;

1.22.6. The sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable franchise fees from purchaser's customer;

1.22.7. The imputed value of the provision of Cable Services to customers on a complimentary basis including, without limitation, the provision of Cable Services to public buildings as required or permitted herein;

1.22.8. Any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal, or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes, and non-cable franchise fees and revenue);

1.22.9. Any forgone revenue that Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Agreement; provided, however, that such forgone revenue that Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value in place of cash consideration shall be included in Gross Revenue;

1.22.10. Sales of capital assets or sales of surplus equipment;

1.22.11. Reimbursement by programmers of marketing costs incurred by Franchisee for the introduction of new programming pursuant to a written marketing agreement; or

1.22.12. Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing.

1.23. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(20), which currently states, "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."

1.24. *Initial Service Area*: The area depicted as the Initial Service Area in Exhibit A.

1.25. *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.26. *Member Jurisdictions*: Washington County and the member cities of the Commission that are within the Initial Service Area, specifically the cities of Beaverton, Cornelius, Durham, Forest Grove, Hillsboro, King City, Lake Oswego, Rivergrove, Tigard, and Tualatin.

1.27. *Non-Cable Services*: Any service that does not constitute the provision of Video Programming directly to multiple Subscribers in the Franchise Area including, but not limited to, Information Services and Telecommunications Services consistent with FCC rules and orders by courts of competent jurisdiction following all appeals.

1.28. *Normal Business Hours*: Those hours during which most similar businesses in the Franchise Area are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

1.29. *Origination Points*: Locations from which PEG programming is delivered to the PEG Access Headend for transmission as set forth in Exhibit B.

1.30. *PEG*: Public, educational, and governmental.

1.31. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.32. *Public Access Channel*: An Access Channel available solely for use by the residents and others in the Franchise Area, as authorized by Grantor.

1.33. *Public Communications Network ("PCN") / Institutional Network*: The separate communications network provided by Comcast Inc. or its successor in interest, designed principally for the provision of non-entertainment, interactive services to schools, public agencies, or other non-profit agencies for use in connection with the ongoing operations of such institutions. Services provided may include video, audio, and data to PCN subscribers on an individual application, private channel basis. This may include, but is not limited to, two-way video, audio, or digital signals among institutions.

1.34. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the Member Jurisdictions, to the full extent of the Member Jurisdictions' right, title, interest, and/or authority to grant a franchise to occupy and use such streets and easements for Telecommunications Facilities and Cable Service. Public Rights-of-Way shall also include any easement granted or owned by the Grantor or Member Jurisdictions and acquired, established, dedicated or devoted for public utility purposes. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other nonwire communications or broadcast services.

1.35. *School*: Any educational institution, public or private, registered by the State of Oregon pursuant to ORS 345.505-.525, excluding home schools, including but not limited to primary and secondary schools, colleges and universities.

1.36. *Service Area*: All portions of the Franchise Area where Cable Service is being offered, including the Initial Service Area and any Additional Service Areas.

1.37. *Service Date*: The date that Franchisee first provides Cable Service on a commercial basis directly to more than one Subscriber in the Franchise Area. Franchisee shall memorialize the Service Date by notifying Grantor in writing of the same, which notification shall become a part of this Franchise.

1.38. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.39. *Telecommunications Facilities*: Franchisee's existing Telecommunications Services and Information Services facilities and its FTTP Network facilities.

1.40. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. § 153(46), which currently states, "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

1.41. *Title II*: Title II of the Communications Act.

1.42. *Title VI*: Title VI of the Communications Act.

1.43. *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(20), which currently states, "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."

2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement, Grantor and Member Jurisdictions hereby grant Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

2.1.1. This Agreement is intended to convey limited rights and interests only as to those streets and Public Rights-of-Way in which the Member Jurisdictions have an actual interest. It is not a warranty of title or interest in any Public Right-of-Way, it does not provide the Franchisee any interest in any particular location within the Public Right-of-Way, and it does not confer rights other than as expressly provided in the grant hereof. Except as set forth in this Agreement, this Agreement does not deprive Grantor or Member Jurisdictions of any powers, rights, or privileges they now have or may acquire in the future under applicable law, to use, perform work on, or regulate the use and control of the Member Jurisdictions' streets covered by this Agreement, including without limitation, the right to perform work on their roadways, Public Rights-of-Way, or appurtenant drainage facilities, including constructing, altering, paving, widening, grading or excavating thereof.

2.1.2. This Agreement authorizes Franchisee to engage in providing Cable Service. Nothing herein shall be interpreted to prevent Grantor or Franchisee from challenging the lawfulness or enforceability of any provisions of applicable law.

2.1.3. To the extent Franchisee uses other parties (whether or not affiliated) to fulfill its obligations hereunder, Franchisee will insure such parties comply with the terms and conditions of this Agreement.

2.2. *Regulatory Authority Over the FTTP Network:* The parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities for the provision of Non-Cable Services. Jurisdiction over such Telecommunications Facilities is governed by federal and state law, and Grantor and Member Jurisdictions do not and will not assert jurisdiction over Franchisee's FTTP Network in contravention of those laws. Therefore, as provided in Section 621 of the Communications Act, 47 U.S.C. § 541, Grantor and Member Jurisdictions' regulatory authority under Title VI of the Communications Act is not applicable to the construction, installation, maintenance, or operation of Franchisee's FTTP Network to the extent the FTTP Network is constructed, installed, maintained, or operated for the purpose of upgrading and/or extending Verizon's existing Telecommunications Facilities for the provision of Non-Cable Services. Nothing in this Agreement shall affect the Grantor or Member Jurisdictions' authority, if any, to adopt and enforce lawful regulations with respect to the Public Rights-of-Way, subject to 2.9 below.

2.3. *Term:* The term of this Agreement and all rights, privileges, obligations, and restrictions pertaining thereto shall be from the Effective Date of this Agreement through the fifteenth (15th) anniversary thereof, unless extended or terminated sooner as hereinafter provided.

2.4. *Grant Not Exclusive:* This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor or Member Jurisdictions to any Person to use any street, right-of-way, easements not otherwise restricted, or property for any purpose whatsoever, including the right of the Member Jurisdictions to use same for any purpose they deem fit, including the same or similar purposes allowed Franchisee hereunder. Member Jurisdictions may, at any time, grant authorization to use the Public Rights-of-Way for any purpose not incompatible with Franchisee's authority under this Agreement, and for such additional franchises for cable systems as the Grantor deems appropriate. Any such rights which are granted shall not adversely impact the authority as granted under this Agreement and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.5. *Effect of Acceptance:* By accepting the Agreement, the Franchisee: (1) acknowledges and accepts the Grantor's and Member Jurisdiction's legal right to issue the Agreement; (2) acknowledges and accepts the Grantor's legal right to enforce the Agreement on behalf of its Member Jurisdictions; (3) agrees that it will not oppose the Grantor intervening or other participation in any proceeding affecting Cable Service over the Cable System in the Franchise Area; (4) accepts and agrees to comply with each and every provision of this Agreement; and (5) agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

2.6. *Franchise Subject to Federal Law:* Notwithstanding any provision to the contrary herein, this Franchise and its exhibits are subject to and shall be governed by all

applicable provisions of federal law and regulation as they may be amended, including but not limited to the Communications Act.

2.7. No Waiver:

2.7.1. The failure of Grantor on one or more occasions to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by Grantor, nor to excuse Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing.

2.7.2. The failure of Franchisee on one or more occasions to exercise a right under this Franchise or applicable law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or of performance of this Agreement, nor shall it excuse Grantor from performance, unless such right or performance has been specifically waived in writing.

2.8. Construction of Agreement:

2.8.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.8.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 Communications Act, 47 U.S.C. § 545.

2.8.3. Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as they may be amended, including but not limited to the Communications Act. Should any change to state and federal law after the Effective Date have the lawful effect of materially altering the terms and conditions of this Franchise to the detriment of one or more parties, then the parties shall modify this Franchise to ameliorate such adverse effects on, and preserve the affected benefits of, the Franchisee and/or the Grantor to the extent possible which is not inconsistent with the change in law. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then, at Franchisee or Grantor's option, the parties agree to submit the matter to mediation. In the event mediation does not result in an agreement, then, at Franchisee or Grantor's option, the parties agree to submit the matter to non-binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The non-binding arbitration and mediation shall take place in the Franchise Area, unless the parties' representatives agree otherwise. In any negotiations, mediation, and arbitration under this provision, the parties will be guided by the purpose as set forth below. In reviewing the claims of the parties, the mediators and arbitrators shall be guided by the purpose of the parties in submitting the matter for guidance. The parties agree that their purpose is to modify the Franchise so as to preserve intact, to the greatest extent possible, the benefits that each party has bargained for in entering into this Agreement and ameliorate the adverse effects of the change in law in a manner not inconsistent with the change in law. Should the parties not reach agreement, including not mutually agreeing to accept the guidance of the mediator or arbitrator, this Section 2.8.3 shall have no further force or effect. To the extent permitted by law,

if there is a change in federal law or state law that permits Franchisee to opt out of or terminate this Agreement, then Franchisee agrees not to exercise such option.

2.9. *Police Powers:* In executing this Franchise Agreement, the Franchisee acknowledges that its rights hereunder are subject to the lawful police powers of Grantor or Member Jurisdictions to adopt and enforce general ordinances necessary to the safety and welfare of the public and Franchisee agrees to comply with all lawful and applicable general laws and ordinances enacted by Grantor or Member Jurisdictions pursuant to such power. Nothing in this Agreement shall be construed to prohibit the reasonable, necessary, and lawful exercise of Grantor or Member Jurisdictions' police powers. However, if the reasonable, necessary and lawful exercise of Grantor or Member Jurisdictions' police power results in any material alteration of the terms and conditions of this Franchise, then the parties shall modify this Franchise to the satisfaction of all parties to ameliorate the negative effects on Franchisee of the material alteration. If the parties cannot reach agreement on the above-referenced modification to the Franchise, then Franchisee may terminate this Agreement without further obligation to Grantor or Member Jurisdictions or, at Franchisee's option, the parties agree to submit the matter to binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

2.10. *Termination of Telecommunications Services.* Notwithstanding any other provision of this Agreement, if Franchisee ceases to provide Telecommunications Services over the FTTP Network at any time during the Term and is not otherwise authorized to occupy the Public Rights-of-Way in the Franchise Area, Grantor may regulate the FTTP Network as a cable system to the extent permitted by Title VI.

3. PROVISION OF CABLE SERVICE

3.1. *Service Area:*

3.1.1. *Initial Service Area:* Franchisee shall offer Cable Service to significant numbers of Subscribers in residential areas of the Initial Service Area, and may make Cable Service available to businesses in the Initial Service Area, within twelve (12) months of the Service Date of this Franchise, and shall offer Cable Service to all residential areas in the Initial Service Area within four (4) years of the Service Date of the Franchise, except: (A) for periods of Force Majeure; (B) for periods of delay caused by Grantor or Member Jurisdictions; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Service Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in developments or buildings that Franchisee cannot access under reasonable terms and conditions after good faith negotiation, as determined by Franchisee; and (F) in developments or buildings that Franchisee is unable to provide Cable Service for technical reasons or which require non-standard facilities which are not available on a commercially reasonable basis; and (G) in areas where the occupied residential household density does not meet the density requirement set forth in Subsection 3.1.1.1.

3.1.1.1. *Density Requirement:* Franchisee shall make Cable Services available to residential dwelling units in all areas of the Service Area where the average density is equal to or greater than ten (10) occupied residential dwelling units per quarter mile as

measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line. Should new construction in an area within the Initial Service Area meet the density requirements after the time stated for providing Cable Service as set forth in Subsection 3.1.1, Franchisee shall provide Cable Service to such area within ninety (90) days of the date that the Franchisee's Franchise Service Manager is notified of a request from a potential Subscriber and verification that the density requirement is satisfied. Franchisee has an ongoing obligation to notify Grantor of any changes to the name and contact information for the Franchise Service Manager.

3.1.2. *Additional Service Areas:* Aside from the Initial Service Area, Franchisee shall not be required to extend its Cable System or to provide Cable Services to any other areas within the Franchise Area during the term of this Franchise or any renewals thereof. If Franchisee desires to add Additional Service Areas within the unincorporated areas of Washington County or the territorial limits of the Member Jurisdictions, Franchisee shall notify Grantor in writing and provide a map of such Additional Service Area at least thirty (30) days prior to providing Cable Services to such Additional Service Area which shall then become part of the Franchise Area. Notwithstanding the foregoing, the parties acknowledge that the addition of the cities of Banks, Gaston, or North Plains as an Additional Service Area shall be subject to reasonable approval by Grantor and the affected jurisdiction. Franchisee shall meet with Grantor at least once every two years, beginning with the Effective Date, to discuss whether technology and development warrant extending the service area to include Banks, Gaston, North Plains and additional areas within Member Jurisdiction boundaries not included in the Initial Service Area. As a result of each of these meetings, Franchisee will either (a) negotiate in good faith an amendment to the Agreement to expand service to one or more of these areas, if an amendment is necessary, or (b) explain why, in Franchisee's sole discretion, expansion of service is not yet justified. Franchisee shall not be required to disclose confidential information in conjunction with these discussions.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Service Area in conformance with Section 3.1 and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense (other than a standard installation charge) all residential dwelling units that are within one hundred twenty-five (125) feet of trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for residential dwelling unit connections that exceed one hundred twenty-five (125) feet and actual costs incurred to connect any non-residential dwelling unit Subscriber.

3.3. *Cable Service to Public Buildings:* Subject to 3.1, Franchisee shall provide, without charge within the Service Area, one service outlet activated for Basic Service to each unserved (by any cable operator) fire station, School, police station, and public library as may be designated by Grantor; provided, however, that if it is necessary to extend Franchisee's trunk or feeder lines more than one hundred twenty-five (125) feet solely to provide service to any such School or public building, Grantor shall have the option either of paying Franchisee's direct costs for such extension in excess of one hundred twenty-five (125) feet, or of releasing

Franchisee from the obligation to provide service to such building. Furthermore, Franchisee shall be permitted to recover, from any School or other public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than one hundred twenty-five (125) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged. No more than 150 complimentary service outlets shall be required to be served under this provision. In addition, Franchisee shall provide without charge one service outlet activated for Enhanced Basic Service and one set-top box as necessary to receive digital signals to each of the following locations: the Commission's offices and the Commission's PEG Access Headend.

4. SYSTEM OPERATION

As provided in Section 2.2, the parties recognize that Franchisee's FTTP Network is being constructed and will be operated and maintained as an upgrade to and/or extension of its existing Telecommunications Facilities. The jurisdiction of Grantor or Member Jurisdictions over such Telecommunications Facilities is restricted by federal and state law, and neither Grantor nor the Member Jurisdictions asserts jurisdiction over Franchisee's FTTP Network in contravention of those limitations.

5. SYSTEM FACILITIES

5.1. *System Characteristics:* The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time. Franchisee's Cable System shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted industry standards.

5.1.1. The System shall be designed with an initial analog and digital carrier passband of between 50 MHz and 860 MHz. The System shall be capable of analog, standard digital, HDTV, VOD, as well as other future services.

5.1.2. The System shall have a modern design, when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise Term.

5.1.3. The System shall have protection against outages due to power failures, so that back-up power is available at a minimum for at least twenty-four (24) hours at each headend, and conforming to industry standards, but in no event rated for less than four (4) hours, at each power supply site.

5.1.4. All work authorized and required hereunder shall be done in a safe, thorough and workman-like manner. The Franchisee must comply with all safety requirements, rules, and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation,

the Franchisee must comply with the National Electrical Code, National Electric Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

5.2. *Inspection of Facilities:* The Grantor may inspect upon request any of Franchisee's facilities and equipment to confirm performance under this Agreement upon at least twenty-four (24) hours notice. In all instances, a qualified representative of Franchisee must be available to accompany the tour to insure that no privacy requirements are violated.

5.3. *Emergency Alert System:*

5.3.1. Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the System.

5.3.2. In the event of a state or local civil emergency, the EAS shall be activated by equipment or other acceptable means as set forth in the State and Local EAS Plans. Member Jurisdictions shall permit only appropriately trained and authorized Persons to activate the EAS equipment through the EAS Local Primary Stations (LP1 or LP2) and remotely override the audio and video on all channels on the Cable System.. Each Member Jurisdiction shall take reasonable precautions to prevent any inappropriate use of the EAS or Cable System, or any loss or damage to the Cable System, and, except to the extent prohibited by law, shall hold harmless and defend Franchisee, its employees, officers and assigns from and against any claims arising out of use of the EAS by that Member Jurisdiction, including but not limited to, reasonable attorneys' fees and costs.

6. **PEG SERVICES**

6.1. *PEG Access Channels:*

6.1.1. All PEG Access Channels provided for herein shall be administered by the Grantor or its designee. Grantor or its designee shall establish rules and regulations for use of PEG facilities consistent with, and as required by, 47 U.S.C. §531. Franchisee shall cooperate with Grantor or its designee in the use of the Cable System for the provision of PEG Access Channels.

6.1.2. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide Grantor, within thirty (30) days of the Service Date of this Agreement, six (6) dedicated Public, Educational, and Government Access Channels ("PEG Access Channels"). All PEG Access Channels will be on the Basic Service Tier and will be fully accessible to Subscribers, consistent with FCC regulations. Franchisee shall ensure that the signal quality for all PEG Access Channels is in compliance with all applicable FCC technical standards. Franchisee will use equipment and procedures that will minimize the degradation of signals that do not originate with the Franchisee. Franchisee shall provide regular and routine maintenance and repair/replacement of transmission equipment it supplies necessary to carry a quality signal on the PEG Access Channels and from the Origination Points provided for herein.

6.1.3. Within ten (10) days after the Effective Date of this Agreement, Grantor shall inform Franchisee of the general nature of the programming to be carried on the initial PEG Access Channels set aside by Franchisee. Grantor and Member Jurisdictions authorize Franchisee to transmit such programming within and outside the Franchise Area. Franchisee shall assign the PEG Access Channels on its channel line-up as set forth in the notice from Grantor to the extent such channel assignments do not interfere with Franchisee's existing or planned channel line-up. If Grantor later changes the programming carried on a PEG Access Channel(s), Grantor shall provide Franchisee with at least ninety (90) days notice of the change(s).

6.1.3.1. If a PEG Access Channel provided under this Article is not being utilized by Grantor, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as Grantor elects to utilize the PEG Access Channel for its intended purpose.

6.1.3.2. Grantor shall require all local producers and users of any of the PEG facilities or Channels to agree to authorize Franchisee to transmit programming consistent with this agreement in writing and to defend and hold harmless Franchisee and Grantor from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or PEG Access Channel.

6.1.4. If all of Franchisee's video programming is delivered in a digital format, then, Franchisee shall reserve six (6) additional PEG Access Channels, for a total of twelve (12) PEG Access Channels. Franchisee shall activate the reserved PEG Access Channels following a written request from Grantor when the following criteria have been met for each additional PEG Access Channel:

6.1.4.1. Grantor must have a documented need for additional programming capacity that cannot be fulfilled by existing PEG Access Channels;

6.1.4.2. the existing PEG Access Channels must be utilized for PEG programming within the Franchise Area as follows:

6.1.4.2.1. Public Access Channels: During any eight (8) consecutive weeks, the Public Access Channel is in use for Locally Produced, Locally Scheduled Original Programming 80% of the time, seven (7) days per week, for any consecutive five (5) hour block during the hours from noon to midnight; or

6.1.4.2.2. Educational Access Channels: During any eight (8) consecutive weeks, the Educational Access Channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.; or

6.1.4.2.3. Governmental Access Channels: During any eight (8) consecutive weeks, the Governmental Access Channel is in use for Locally Scheduled Original Programming 80% of the time, five (5) days per week, Monday through Friday, for any consecutive five (5) hour block during the hours from 6:00 a.m. to 11:00 p.m.;

6.1.4.3. all cable providers within the Franchise Area similarly provide such additional PEG Access Channels; and

6.1.4.4. as long as the signal source location is the PEG Access Headend, any additional PEG Access Channel shall be made available within one hundred twenty (120) days following Grantor's request (which shall constitute Grantor's authorization to transmit the PEG Access Channel within and outside the Franchise Area) and verification of compliance with each of the foregoing conditions. If the signal source location is not the PEG Access Headend, the timing of the availability and other conditions will be by mutual agreement of Grantor and Franchisee. In no event shall the origination point be located outside the Franchise Area.

6.1.5. For the purpose of Section 6.1.4:

6.1.5.1. "Locally Produced" means programming produced in Clackamas, Multnomah, or Washington Counties, or the Vancouver/Clark County, Washington metropolitan area; and

6.1.5.2. "Original Programming" means Programming in its initial cablecast on the Cable System or in its first or second repeat; and

6.1.5.3. "Locally Scheduled" means that the scheduling, selection and or playback of Original Programming on a per-program basis is determined in consultation with, or pursuant to the operating procedures of, the Designated Access Provider or, with respect to programming received from an Interconnection, the provider transmitting the programming over the Interconnection. However, carriage on any PEG Access Channel of all or a substantial portion of any non-local programming which duplicates programming otherwise carried by Grantee as a part of its Basic or expanded Basic Cable Services shall not be considered "Locally Scheduled."

6.2. Connection of PEG Access Headend:

6.2.1. Grantor shall provide suitable video signals for the PEG Access Channels to Franchisee at Grantor's PEG Access Headend located at 11375 SW Center Street, Suite B, Beaverton, Oregon 97005. Upon receipt of a suitable video signal, Franchisee shall provide, install, and maintain in good working order the equipment necessary for transmitting the PEG signal to the channel aggregation site for further processing for distribution to Subscribers. Franchisee's obligation with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Franchisee, of suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and such cooperation of Grantor as is reasonably necessary for Franchisee to fulfill such obligations.

6.2.2. Grantor shall have the right to relocate the PEG Access Headend one time during the term of this Franchise as follows: Grantor may relocate the PEG Access Headend to a new location within the Service Area and within five hundred (500) feet of one of Franchisee's active, video-enabled FTTP trunk or feeder lines; provided that Grantor shall provide to Franchisee at the new location: (1) suitable required space, environmental conditions, electrical power supply, access, pathway within the facility, and other facilities and cooperation of Grantor as is reasonably necessary; (2) access to such space at least ninety (90) days prior to anticipated use of the new PEG Access Headend; and (3) reimbursement of up to Fifteen Thousand Dollars (\$15,000) for costs associated with the relocation of the equipment necessary for transmitting the PEG signal.

6.3. *Origination Points:* To facilitate the Grantor's transmission of live video/audio and other PEG programming from certain remote sites, the Franchisee, at its own expense, will provide and maintain fiber connections and the related analog to digital (ADC) transmission/receive equipment necessary between the Grantor's PEG Access Headend and the Origination Points listed in Exhibit B of this Agreement. Grantor agrees it will not use these fiber connections for other purposes.

6.4. *PEG/PCN Grant:*

6.4.1. Franchisee shall provide an annual grant (the "PEG/PCN Grant") to Grantor to be used in support of the production of local PEG programming and in support of the PCN. Such grant shall be used by Grantor for capital costs for public, educational, or governmental access facilities, including, but not limited to, studio and portable production equipment, editing equipment and program playback equipment, or for renovation or construction of PEG access facilities, and to support the capital and operating needs of PCN users.

6.4.2. The PEG/PCN Grant provided by Franchisee hereunder shall be the sum of \$1.00, per month, per Subscriber in the Service Area to Franchisee's Basic Service Tier. Franchisee shall deliver the PEG/PCN Grant payment, along with a brief summary of the Subscriber information upon which it is based, to Grantor concurrent with the Franchise fee payment. Calculation of the PEG/PCN Grant will commence with the first calendar quarter during which Franchisee obtains its first Subscriber in the Service Area. Franchisee may retain up to twenty-five percent (25%) of PEG/PCN Grant payments until the full amount of the Incidental Payment required in Section 14.5 of this Agreement is recovered.

6.4.3. Grantor shall provide Franchisee with a complete accounting annually of the distribution of funds granted pursuant to this Section.

6.4.4. To the extent permitted by federal law, the Franchisee shall be allowed to recover the costs of the PEG/PCN Grant or any other costs arising from the provision of PEG and PCN services from Subscribers and to include such costs as a separately billed line item on each Subscriber's bill. Without limiting the foregoing, if allowed under state and federal laws, Franchisee may externalize, line-item, or otherwise pass-through these costs to Subscribers.

7. FRANCHISE FEES

7.1. Payment to the Grantor: Franchisee shall pay to the Grantor a Franchise fee of five percent (5%) of annual Gross Revenue. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. In the event any law or valid rule or regulation applicable to this Franchise limits Franchise fees below the five percent (5%) of annual Gross Revenues required herein, Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then the Franchisee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%) during all affected time periods.

7.2. Supporting Information: Each Franchise fee payment shall be accompanied by a written report prepared by a representative of Franchisee showing the basis for the computation in the form attached hereto as Exhibit C. Grantor shall have the right to reasonably request further supporting documentation and information for each Franchise fee payment, subject to the confidentiality provisions in this Agreement; provided that Franchisee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have been defined specifically within this Agreement.

7.3. Acceptance of Payments: Subject to Section 7.4 below, no acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Franchisee.

7.4. Audit of Franchise Fee Payments:

7.4.1. Grantor, or its designee, may conduct an audit or other inquiry in relation to payments made by Franchisee no more than once every two (2) years during the Term. As a part of the audit process, Grantor or Grantor's designee may inspect Franchisee's books of accounts relative to Grantor at any time during regular business hours and after thirty (30) calendar days prior written notice.

7.4.2. All records deemed by Grantor or Grantor's designee to be reasonably necessary for such audit, which shall include, but not be limited to, all records subject to inspection by Grantor pursuant to Section 9.2 herein, shall be made available by Franchisee in a mutually agreeable format and location. Franchisee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of a written request. Franchisee may provide such responses within a reasonable time after the expiration of the response period above so long as Franchisee makes a good faith effort to procure any such tardy response.

7.4.2.1. During any audit period when Franchisee has less than 10,000 Subscribers, if the results of any audit indicate that Franchisee (i) paid the correct Franchise fee, (ii) overpaid the Franchise fee and is entitled to a refund or credit, or (iii) underpaid the Franchise fee by five percent (5%) or less, then Grantor shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the Franchise fee by more than five percent (5%) during the audit period, then Franchisee shall pay the reasonable, documented, third-party costs of the audit up to Ten Thousand Dollars (\$10,000) per audit.

7.4.2.2. During any period when Franchisee has 10,000 or more Subscribers, if the results of any audit indicate that Franchisee (i) paid the correct Franchise fee, (ii) overpaid the Franchise fee and is entitled to a refund or credit, or (iii) underpaid the Franchise fee by three percent (3%) or less, then Grantor shall pay the costs of the audit. If the results of the audit indicate Franchisee underpaid the Franchise fee by more than three percent (3%) during the audit period, then Franchisee shall pay the reasonable, documented, third-party costs of the audit up to Fifteen Thousand Dollars (\$15,000) per audit.

7.4.2.3. Grantor agrees that any audit shall be performed in good faith. If any audit discloses an underpayment of the Franchise fee of any amount, Franchisee shall pay Grantor the amount of the underpayment, together with interest as provided in Section 7.7 below. Any auditor employed by Grantor shall not be compensated on a success based formula, e.g., payment based on a percentage on underpayment, if any.

7.5. Limitation on Franchise Fee Actions: The period of limitation for recovery of any Franchise fee payable hereunder shall be three (3) years from the date on which payment by Franchisee is due.

7.6. Bundled Services: In the case of a Cable Service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of Franchisee's revenue attributable to such other services, capabilities, or applications shall be included in Gross Revenue unless Franchisee's books and records that are kept in the regular course of business identify the revenue as being attributable to the other services, capabilities or applications.

7.7. Annual Franchise Fee Report: Franchisee shall, no later than one hundred twenty (120) days after the end of each calendar year, furnish to Grantor an annual summary of Franchise fee calculations, substantially in the form attached hereto as Exhibit C but showing annual rather than quarterly amounts.

7.8. Interest on Late Payments: In the event that a Franchise fee payment or other sum is not received by Grantor on or before the due date, or is underpaid, Franchisee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the statutory interest rate on judgments in the State of Oregon.

7.9. Payment on Termination: If this Agreement terminates for any reason, Franchisee shall file with Grantor within ninety (90) calendar days of the date of the termination, a financial statement showing the Gross Revenues received by the Franchisee since the end of the previous calendar quarter for which Franchise fees were paid. If, within sixty (60) days of

providing such financial statement, Franchisee has not satisfied all remaining financial obligations to Grantor, Grantor reserves the right to satisfy any remaining financial obligations of the Franchisee to Grantor by utilizing the funds available in the Letter of Credit provided by the Franchisee under Section 13.6 of this Agreement.

7.10. *Costs of Publication:* Franchisee shall pay the reasonable cost of newspaper notices and publication pertaining to this Agreement, and any amendments thereto, including changes in control or transfers of ownership, as such notice or publication is reasonably required by Grantor under applicable law.

8. CUSTOMER SERVICE

8.1. Customer Service Requirements are set forth in Exhibit D, which shall be binding unless amended by written consent of the parties.

8.2. If, at any time during the term of this Franchise, "Effective Competition," as defined by the Communications Act, as the term may be reasonably applied to Franchisee, ceases to exist in the Service Area, Grantor and Franchisee agree to enter into good faith negotiations to determine if there is a need for additional customer service requirements. Grantor and Franchisee shall enter into such negotiations within forty-five (45) days following a request for negotiations by Franchisee after the cessation of "Effective Competition" as described above.

9. REPORTS AND RECORDS

9.1. *Open Books and Records:* Upon reasonable written notice to Franchisee and with no less than thirty (30) days written notice to Franchisee, Grantor shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the Franchise Area at any time during weekday business hours and on a nondisruptive basis at a mutually agreed location within Franchisee's Title II service territory in Oregon and Washington, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by Grantor. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551. If any books, records, maps, plans or other requested documents are too voluminous, not available locally in the Franchisee's Title II service territory in Oregon and Washington, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at a location mutually agreed to by Grantor and the Franchisee, provided that the Franchisee must pay all travel expenses incurred by Grantor in inspecting those documents or having the documents inspected by its designee, above those that would have been incurred had the documents been produced in Franchisee's Title II service territory in the Portland metropolitan area.

9.2. *Proprietary Books and Records:* If the Franchisee believes that the requested information is confidential and proprietary, the Franchisee must provide the following documentation to Grantor: (i) specific identification of the information; and (ii) statement

attesting to the reason(s) Franchisee believes the information is confidential. The Grantor shall take reasonable steps to protect the proprietary and confidential nature of any books, records, Service Area maps, plans, or other documents requested by Grantor that are provided pursuant to this Agreement to the extent they are designated as such by the Franchisee, consistent with the Oregon Public Records Law. Should Grantor be required under state law to disclose information derived from Franchisee's books and records, Grantor agrees that it shall provide Franchisee with reasonable notice and an opportunity to seek appropriate protective orders prior to disclosing such information. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Service Area, or any confidential information relating to such Cable Service where the Grantor and Member Jurisdictions cannot lawfully protect the confidentiality of the information.

9.3. *Records Required:* Franchisee shall maintain:

9.3.1. Records of all written complaints for a period of three (3) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

9.3.2. Records of outages for a period of three (3) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

9.3.3. Records of service calls for repair and maintenance for a period of three (3) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

9.3.4. Records of installation/reconnection and requests for service extension for a period of three (3) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

9.3.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service.

9.4. *Additional Requests:* The Grantor shall have the right to request in writing such information as is appropriate and reasonable to determine whether Franchisee is in compliance with applicable Customer Service Standards, as referenced in Exhibit D. Franchisee shall provide Grantor with such information in such format as Franchisee customarily prepares reports. Franchisee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for the Grantor to evaluate compliance, subject to Section 9.6.

9.5. *Copies of Federal and State Documents:* Franchisee shall submit to the Grantor a list, or copies of actual documents, of all pleadings, applications, notifications,

communications and documents of any kind, submitted by Franchisee or its parent corporations or Affiliates to any federal, state or local courts, regulatory agencies or other government bodies if such documents specifically relate to the operations of Franchisee's Cable System within the Franchise Area. Franchisee shall submit such list or documents to the Grantor no later than thirty (30) days after filing, mailing or publication thereof. Franchisee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, state, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or state agency or a request for confidential treatment is pending. To the extent allowed by law, any such confidential material determined to be exempt from public disclosure shall be retained in confidence by the Grantor and its duly authorized agents and shall not be made available for public inspection.

9.6. *Report Expense:* All reports and records required under this or any other Section shall be furnished, without cost, to Grantor. Franchisee shall not be required to develop or create reports that are not a part of its normal business procedures and reporting or that have been defined specifically within this Section 9 in order to meet the requirements of this Section 9.

10. INSURANCE AND INDEMNIFICATION

10.1. *Insurance:*

10.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise Term, the following insurance coverage:

10.1.1.1. Commercial General Liability Insurance in the amount of Three Million Dollars (\$3,000,000) combined single limit for property damage and bodily injury; one million dollar (\$1,000,000) limit for broadcaster's liability. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the Franchise Area.

10.1.1.2. Automobile Liability Insurance in the amount of Two Million Dollars (\$2,000,000) combined single limit for bodily injury and property damage coverage.

10.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

10.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$2,000,000 policy limit.

10.1.2. Grantor and Member Jurisdictions shall be designated as additional insureds under each of the insurance policies required in this Article 10 except Worker's Compensation and Employer's Liability Insurance.

10.1.3. Franchisee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement.

10.1.4. Each of the required insurance policies shall be with sureties qualified to do business in the State of Oregon, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

10.1.5. Upon written request, Franchisee shall deliver to Grantor Certificates of Insurance showing evidence of the required coverage.

10.2. *Indemnification:*

10.2.1. Franchisee agrees to indemnify, save and hold harmless, and defend Grantor, its officers, agents, boards and employees, from and against any liability for damages or claims resulting from tangible property damage or bodily injury (including accidental death), to the extent proximately caused by Franchisee's negligent construction, operation, or maintenance of its Cable System, provided that Grantor shall give Franchisee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, Franchisee shall not indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee in connection with PEG Access Channels, use of the PCN, or EAS, or the distribution of any Cable Service over the Cable System.

10.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 10.2.1, Franchisee shall provide the defense of any claims brought against Grantor by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of Grantor, which shall not unreasonably be withheld. Nothing herein shall be deemed to prevent Grantor from cooperating with Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with Grantor, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such settlement does not include the release of Grantor and Grantor does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify Grantor shall in no event exceed the amount of such settlement.

10.2.3. Grantor shall hold Franchisee harmless and shall be responsible for damages, liability or claims resulting from willful misconduct or negligence of Grantor.

10.2.4. Grantor shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by Grantor for which Grantor is legally responsible, subject to any and all defenses and limitations of liability provided by law. Franchisee shall not be required to indemnify Grantor for acts of Grantor which constitute willful misconduct or negligence, on the part of Grantor, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

11. TRANSFER OF FRANCHISE

11.1. Subject to Section 617 of the Communications Act, 47 U.S.C. § 537, no "Transfer of the Franchise" shall occur without the prior consent of Member Jurisdictions, provided that such consent shall not be unreasonably withheld, delayed or conditioned. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of Franchisee in the Franchise or Cable System in order to secure indebtedness, or otherwise excluded under this Article 11.

11.2. A "Transfer of the Franchise" shall mean any transaction in which:

11.2.1. an ownership or other interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that control of Franchisee is transferred; or

11.2.2. the rights held by Franchisee under the Franchise are transferred or assigned to another Person or group of Persons.

However, notwithstanding Subsections 11.2.1 and 11.2.2, a Transfer of the Franchise shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of Franchisee; or any action which is the result of a merger of another Affiliate of Franchisee. The parent of Franchisee is shown in Exhibit E.

11.3. Franchisee shall make a written request ("Request") to Grantor and Member Jurisdictions for approval of any Transfer of the Franchise and furnish all information required by law and/or reasonably requested by Grantor and Member Jurisdictions in respect to its consideration of a proposed Transfer of the Franchise. Member Jurisdictions shall render a final written decision on the Request within one hundred twenty (120) days of the Request, provided it has received all requested information. Subject to the foregoing, if the Member Jurisdictions fail to render a written decision on the Request within one hundred twenty (120) days, the Request shall be deemed granted unless Franchisee and Member Jurisdictions agree to an extension of time.

11.4. In reviewing a Request related to a Transfer of the Franchise, Grantor and Member Jurisdictions may inquire into the legal, technical and financial qualifications of the prospective transferee, and Franchisee shall assist Grantor and Member Jurisdictions in so inquiring. Member Jurisdictions may condition said Transfer of the Franchise upon such terms and conditions as they deem reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective or transferee and to the resolution of outstanding and unresolved issues of Franchisee's noncompliance with the terms and conditions of this Agreement.

11.5. The consent or approval of Member Jurisdictions to any Request by the Franchisee shall not constitute a waiver or release of any rights of Member Jurisdictions, and any transferee shall be expressly subordinate to the terms and conditions of this Agreement.

11.6. Notwithstanding the foregoing, the parties agree that the Member Jurisdictions' consent and/or approval to any transfer or assignment of any rights, title, or interest of Franchisee to any Person shall not be required where Verizon Northwest Inc. or its lawful successor which is not a third party transferee remains the Franchisee following any such transfer or assignment.

12. RENEWAL OF FRANCHISE

12.1. The parties agree that any proceedings undertaken by Grantor and Member Jurisdictions that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Communications Act, 47 U.S.C. § 546.

12.2. In addition to the procedures set forth in said Section 626 of the Communications Act, Grantor agrees to notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Grantor further agrees that such assessments shall be provided to Franchisee promptly so that Franchisee has adequate time to submit a proposal under Section 626 and complete renewal of the Franchise prior to expiration of its term.

13. ENFORCEMENT AND TERMINATION OF FRANCHISE

13.1. *Notice of Violation:* In the event Grantor believes that Franchisee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem, Grantor shall notify Franchisee in writing, stating with reasonable specificity the nature of the alleged violation.

13.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have thirty (30) days from receipt of the written notice described in Section 13.1 to: (i) respond to Grantor, contesting (in whole or in part) Grantor's assertion that a violation has occurred, and requesting a hearing in accordance with subsection 13.3 below; (ii) cure the violation; or (iii) notify Grantor that Franchisee cannot cure the violation within the thirty (30) days, and notify the Grantor in writing of what steps Franchisee shall take to cure the violation including Franchisee's projected completion date for such cure. The procedures provided in Section 13.4 shall be utilized to impose any fines. The date of violation will be the date of the event and not the date Franchisee receives notice of the violation provided, however, that if Grantor has actual knowledge of the violation and fails to give the Franchisee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Franchisee the notice of the violation.

13.2.1. In the event that the Franchisee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor shall, within thirty (30) days of Grantor's receipt of such notice, set a hearing.

13.2.2. In the event that the Franchisee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection 13.2(iii), the Grantor shall set a hearing to determine what fines, if any, shall be applied.

13.2.3. In the event that the Franchisee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection 13.2(i) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what fines shall be applied.

13.3. *Public Hearing:* In the case of any hearing pursuant to section 3.2 above, Grantor shall provide reasonable notice to Franchisee of the hearing in writing. At the hearing Franchisee shall be provided an opportunity to be heard, to examine Grantor's witnesses, and to present evidence in its defense. The Grantor may also hear any other person interested in the subject, and may provide additional hearing procedures as Grantor deems appropriate.

13.3.1. If, after the hearing, Grantor determines that a violation exists, Grantor may use one of the following remedies:

13.3.1.1. Order Franchisee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;

13.3.1.2. Establish the amount of fine set forth in Section 13.5, taking into consideration the criteria provided for in subsection 13.4 of this Agreement as appropriate in Grantor's discretion; or

13.3.1.3. Pursue any other legal or equitable remedy available under this Agreement or any applicable law; or

13.3.1.4. In the case of a substantial material default of a material provision of the Franchise, seek to revoke the Franchise in accordance with Section 13.7.

13.4. *Reduction of Fines:* The fines set forth in Section 13.5 of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

13.4.1. Whether the violation was unintentional;

13.4.2. The nature of the harm which resulted;

13.4.3. Whether there is a history of prior violations of the same or other requirements;

13.4.4. Whether there is a history of overall compliance, and/or;

13.4.5. Whether the violation was voluntarily disclosed, admitted or cured.

13.5. *Fine Schedule:*

13.5.1. For violating telephone answering standards set forth in Exhibit D, Section 2.D for a quarterly measurement period, unless the violation has been cured, fines shall be as set forth below. A cure is defined as meeting the telephone answering standards for two consecutive quarterly measurement periods.

<u>Quarterly Telephone Answer Time Fines</u>			
	<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd Violation</u>
Quarterly Fine	\$ 2,000*	\$ 4,000*	\$ 6,000*
* If after forty-two (42) months, no fines have been assessed for violations of call answer time standards, these fines shall be reduced by fifty percent (50%).			

13.5.2. For all other violations of this Agreement, the fine shall be \$250 per day.

13.5.3. Total fines shall not exceed Twenty-Five Thousand Dollars (\$25,000) in any twelve-month period.

13.5.4. If Grantor elects to assess a fine pursuant to this Section, such election shall constitute Grantor's exclusive remedy for the violation for which the fine was assessed for a period of sixty (60) days. Thereafter, the remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any rights of the Grantor at law or equity, provided that the cumulative remedies may not be disproportionate to the magnitude and severity of the breach for which they are imposed.

13.6. *Letter of Credit:* Franchisee shall provide a letter of credit in the amount of Twenty Thousand Dollars (\$20,000) as security for the faithful performance by Franchisee of all material provisions of this Agreement.

13.7. *Revocation:* Should Grantor seek to revoke the Franchise after following the procedures set forth in Sections 13.1 through 13.5 above, Grantor shall give written notice to Franchisee of its intent. The notice shall set forth the exact nature of the noncompliance. Franchisee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event Grantor has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a public hearing. Grantor shall cause to be served upon Franchisee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

13.7.1. At the designated hearing, Franchisee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

13.7.2. Following the public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter Grantor shall determine (i) whether an event of default has occurred; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by Franchisee. Grantor shall also determine whether to revoke the Franchise based on the information presented, or, where applicable, grant additional time to Franchisee to effect any cure. If Grantor determines that the Franchise shall be revoked, Grantor shall promptly provide Franchisee with a written decision setting forth its reasoning. Franchisee may appeal such determination of Grantor to an appropriate court, which shall have the power to review the decision of Grantor *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the determination of the Grantor.

13.7.3. Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce Grantor's rights under the Franchise in lieu of revocation of the Franchise.

13.8. *Limitation on Grantor Liability:* The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. §555a is applicable to this Agreement.

13.9. *Franchisee Termination:* Franchisee shall have the right to terminate this Franchise and all obligations hereunder within ninety (90) days after the end of four (4) years from the Service Date of this Franchise, if at the end of such four (4) year period, Franchisee does not then in good faith believe it has achieved a commercially reasonable level of Subscriber penetration on its Cable System. Franchisee may consider Subscriber penetration levels outside the Franchise Area in this determination. Notice to terminate under this Section 13.9 shall be given to the Grantor in writing, with such termination to take effect no sooner than one hundred and twenty (120) days after giving such notice. Franchisee shall also be required to give its then-current Subscribers not less than ninety (90) days prior written notice of its intent to cease Cable Service operations.

14. MISCELLANEOUS PROVISIONS

14.1. *Actions of Parties:* In any action by Grantor or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

14.2. *Binding Acceptance:* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees,

successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

14.3. *Preemption:* In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of Grantor.

14.4. *Force Majeure:* Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure.

14.4.1. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by Grantor and/or Subscribers.

14.5. *Incidental Payment:* The Franchisee shall pay the Grantor an Incidental Payment of \$149,600 as set forth below as a condition of the Franchise granted by this Agreement. The Incidental Payment will be made to Grantor in four annual payment installments as follows: Commencing on the Service Date, and on the same date in the three (3) following years, the Franchisee shall provide the amounts shown below to the Grantor as an advance of a portion of the Annual PEG/PCN Grant required in Section 6.4 of the Agreement.

Incidental Payment Schedule

Year 1	\$17,600
Year 2	\$35,200
Year 3	\$44,000
Year 4	\$52,800

These payments shall not be regarded as franchise fees, nor payments in lieu of franchise fees, nor as an offset against franchise fees, and they shall be used by Grantor at the Grantor's sole discretion consistent with applicable law. To recover the Incidental Payment, the Franchisee may retain up to twenty-five percent (25%) of the \$1.00 per month collected from Subscribers under Section 6.4 of this Agreement until such time as the total amount of \$149,600 is recovered. Once the total amount of the Incidental Payment is recovered, the Franchisee shall pay the Grantor the full \$1.00 per month, per Subscriber PEG/PCN Grant. The Grantor may assure the accuracy of these payments by inspecting Franchisee's records under Section 9 of this Agreement or by an audit under Section 7.4 of this Agreement.

14.6. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

14.6.1. Notices to Franchisee shall be mailed to:

Verizon Northwest Inc.
Attn: Tim McCallion, President
112 Lakeview Canyon Road, CA501GA
Thousand Oaks, CA 91362

with a copy to:

Mr. Jack H. White
Senior Vice President & General Counsel – Verizon Telecom
One Verizon Way
Room VC43E010
Basking Ridge, NJ 07920-1097

14.6.2. Notices to the Grantor shall be mailed to:

Mr. Bruce Crest, MACC Administrator
Metropolitan Area Communications Commission
1815 NW 169th Place, Suite 6020
Beaverton, OR 97006-4886

14.7. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and Grantor, and it supersedes all prior or contemporaneous agreements, representations or understanding of the parties regarding the subject matter hereof. Any ordinances or parts of ordinances that conflict with the provisions of this Agreement are superseded by this Agreement.

14.8. *Amendments:* Amendments to this Franchise shall be mutually agreed to in writing by the parties.

14.9. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

14.10. *Severability:* If any section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

14.11. *Recitals:* The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

14.12. *Modification:* This Franchise shall not be modified except by written instrument executed by both parties.

14.13. *FTTP Network Transfer Prohibition:* Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the cable system and any capacity used for cable service or otherwise, to Grantor or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

14.14. *Independent Legal Advice:* Grantor and Franchisee each acknowledge that they have received independent legal advice in entering into this Agreement. In the event that a dispute arises over the meaning or application of any term(s) of this Agreement, such term(s) shall not be construed by the reference to any doctrine calling for ambiguities to be construed against the drafter of the Agreement.

14.15. *Grantor Authority:* Grantor represents and warrants that it is authorized to enter into this Agreement on behalf of its Member Jurisdictions pursuant an Intergovernmental Cooperation Agreement originating in 1980 and in effect in its current form since February 13, 2003, and that the party signing below is authorized to execute this Agreement on behalf of the Member Jurisdictions following certification that the governing bodies of each of the affected Member Jurisdictions have approved this Agreement as required by Section 4.E of the Intergovernmental Cooperation Agreement.

14.16. *Franchisee Authority:* Franchisee represents and warrants that it is authorized to enter into this Agreement and that the party signing below is authorized to execute this Agreement.

AGREED TO THIS ____ DAY OF _____, 2007.

METROPOLITAN AREA COMMUNICATIONS COMMISSION

By: _____
[Title]

VERIZON NORTHWEST INC.

By: _____
[Title]

EXHIBITS

Exhibit A: Initial Service Area/Franchise Area

Exhibit B: Origination Points

Exhibit C: Quarterly Franchise Fee Remittance Form

Exhibit D: Customer Service Standards

Exhibit E: Franchise Parent Structure as of January 24, 2007

Exhibit F: Quarterly Customer Service Standards Performance Report

EXHIBIT A - INITIAL SERVICE AREA/FRANCHISE AREA



